

CHAPTER 109
NEW SCHOOL INFRASTRUCTURE LOCAL OPTION SALES AND SERVICES TAX—
EFFECTIVE ON OR AFTER APRIL 1, 2003, THROUGH FISCAL YEARS
ENDING DECEMBER 31, 2022

These rules govern school infrastructure local option sales and services taxes that are voted on and approved on and after April 1, 2003. Taxes imposed on and after April 1, 2003, automatically expire after ten years of imposition or less if stated in the ballot proposition. Regardless of when the school infrastructure local option sales and services tax was approved, the term, or the date of repeal in a ballot proposition, all school infrastructure local option sales and services taxes will automatically repeal on December 31, 2022.

Payments of the tax revenue under this chapter are based on estimates and projections. Accordingly, if an overpayment of tax to a school district occurs, subsequent payments to that school district will be adjusted to recoup the overpayment.

701—109.1(422E) Use of revenues and definitions.

109.1(1) Use of revenues. Revenues from this tax may be used for the following:

a. “School infrastructure needs,” which are activities that a school district has authorized by contract of indebtedness and the issuance of general obligation bonds under Iowa Code section 296.1 and payment or retirement of outstanding bonds previously issued for school infrastructure as defined in this chapter. “School infrastructure needs” does not include activities related to a school teacher’s or school superintendent’s home or homes. Allowed “activities” consist of the following: construction; reconstruction; repair; demolition work; purchases for construction or remodeling of schoolhouses, stadiums, gyms, fieldhouses, and bus garages. Allowed “activities” include all activities in which revenues are allowed to be expended under Iowa Code Supplement section 298.3, which include: purchase and improvement of grounds; construction of schoolhouses or building and opening roads to these facilities; purchase of buildings; purchase, lease or lease-purchase of equipment or technology exceeding \$500 value per unit; payment of debts contracted for the erection of schoolhouses or buildings; procuring or acquisition of library facilities; repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings, and any additions to existing schoolhouses; expenditures for energy conservation; rental of facilities under Iowa Code chapter 28E; purchase of transportation equipment for transporting students; lease-purchase agreements for school buildings and equipment exceeding \$5,000 per single unit; equipment purchases for recreational purposes; payments to municipalities or other entities as required in Iowa Code section 403.19(2); and activities set forth under the educational and recreational tax as provided in Iowa Code section 300.2.

b. Property tax relief. Revenues from this school infrastructure local option sales and services tax may be used to provide property tax relief.

109.1(2) Definitions. The following definitions shall be used in interpreting the rules of this chapter:

“*Department*” means the Iowa department of revenue.

“*Director*” means the director of the Iowa department of revenue.

“*Guaranteed school infrastructure amount*” or “*guaranteed amount or payment*” means an amount of revenues from the school infrastructure local option sales and services tax to be received by a school district based on the statewide tax revenues per student, multiplied by the quotient of the tax rate percentage imposed in the county, divided by 1 percent and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year, divided by four quarters.

“*Sales tax capacity per student*” means the estimated amount of revenues that a school district receives or would receive if a school infrastructure local option sales and services tax is imposed at 1 percent in the county pursuant to Iowa Code Supplement section 422E.2, divided by the school district’s actual enrollment. Actual enrollment for a school district is obtained from the department of education as provided in 109.4(1).

“*Statewide tax revenues per student*” currently means \$575 per student. The general assembly shall review this amount annually to determine its appropriateness.

“*Supplemental school infrastructure amount*” or “*supplemental amount*” or “*supplemental payment*” means the guaranteed school infrastructure amount for the school district less its pro-rata share of the school infrastructure local option sales and services tax as provided in 109.4(1).

701—109.2(422E) Imposition of tax. For a school infrastructure local option sales and services tax to be valid, it must be imposed in accordance with the following:

109.2(1) *Petition for the tax.* A petition requesting imposition of the tax must be submitted to the board of supervisors or by motion of a school district or school districts.

109.2(2) *Ballot.* A ballot proposition must be substantially similar to the petition by the board of supervisors or motions of the school district(s). The ballot must include the rate of tax, imposition and repeal date, and the specific purpose or purposes for which the revenues will be expended. The form of the ballot is governed by the state commissioner of elections.

109.2(3) *Publication.* The ballot for the imposition of the tax must be published to notify voters of the desire for the tax and the particulars concerning the tax. The notice consisting of the ballot for the tax must be published at least 60 days prior to the election on imposition of the tax.

109.2(4) *Rate of tax.* The rate of tax must not be more than 1 percent.

109.2(5) *Proposition of the tax.* Only a county commissioner of elections shall submit the question of imposition of the tax to the voters.

109.2(6) *Election.* The election regarding imposition of the tax must be held at least 60 days after publication of the notice of the ballot for this tax. The election must be held at the state general election or a special election. An election regarding imposition of the tax shall not be held at a city regular election.

a. Election necessary. Elections are necessary to impose, repeal, or change the rate of the tax, or to change the use in revenues from the tax. Elections for repeal, change in rate, or change in use must be held in the same manner as the election for imposition. If an election is held for change in use of the revenues from the tax, the election must be held only in the school district where the change in use is proposed to occur.

b. Effective dates. The following dates govern the imposition and repeal of the tax:

(1) Effective dates must be no sooner than 90 days following the favorable election to approve the tax. The tax may only be imposed with an effective date of January 1 or July 1.

(2) Repeal dates must be no sooner than 90 days following a favorable election to repeal the tax. Repeal must occur on either June 30 or December 31. All school infrastructure local option sales and services tax under this chapter is repealed effective December 31, 2022, regardless of the repeal date in the ballot of the tax. The tax cannot be extended beyond December 31, 2022.

The tax shall not be repealed nor the rate of tax reduced if obligations are outstanding which are payable as provided in Iowa Code Supplement section 422E.4. However, this provision does not apply to the repeal of the tax on December 31, 2022.

c. Notice of election result. Within 10 days after the election at which there was a vote favoring imposition, repeal or change in rate, the county auditor must send a written notice of the election results to the director. The notice must be a copy of the abstract of votes from the favorable election.

d. Election costs. Cost of an election shall be apportioned among the school districts within the county on a pro-rata basis in proportion to the number of registered voters in each school district who reside within the county and the total number of registered voters within the county.

109.2(7) Revenue purpose statement. No later than 60 days prior to the election, each school district located in the county may submit a revenue purpose statement to the county commissioner. The revenue purpose statement states the specific purpose or purposes for which the tax or supplemental amount will be expended. Such purposes are limited to those set forth in 701—109.1(422E). A copy of the revenue purpose statement must be made available for public inspection, posted at the appropriate polling places of each school district during polling hours, and published in a newspaper of general circulation in the school district no sooner than 20 days and no later than 10 days prior to the election on imposition of the tax.

109.2(8) Lack of a revenue purpose statement or remaining revenues. If a revenue purpose statement is not filed 60 days prior to the election or if revenues remain after fulfilling the purpose specified in the revenue purpose statement, the revenues must be used to reduce the following levies in the following order:

a. Bond levies under Iowa Code sections 298.18 and 298.18A and all other debt levies, until the moneys received or the levies are reduced to zero.

b. The regular physical plant and equipment levy under Iowa Code section 298.2 until the moneys received or the levy is reduced to zero.

c. The voter-approved physical plant and equipment levy and income surtax, if any, under Iowa Code section 298.2, until the moneys received or the levy and income surtax, if any, are reduced to zero.

d. The public educational and recreational levy under Iowa Code section 300.2, until the moneys received or the levy is reduced to zero.

e. The schoolhouse tax levy under Iowa Code section 278.1, subsection 7 (Code 1989), until the moneys received or the levy is reduced to zero.

f. Any money remaining after the reduction of the above levies may be used for any authorized infrastructure purpose of a school district.

701—109.3(422E) Application of law. All provisions found in 701—Chapter 108, which governs the collection of regular local option school infrastructure sales and services tax, are applicable to this chapter unless specific changes are set forth in this chapter. Consequently, the collection of tax by retailers and the transactions exempt from this tax are the same as in 701—Chapter 108.

701—109.4(422E) Collection of tax and distribution. When the director receives school infrastructure local option sales and services taxes from retailers, the director shall credit tax receipts, interest, and penalty to the school district's corresponding account within the secure an advanced vision for education (SAVE) fund as provided in Iowa Code Supplement section 422E.3A. Credits shall be made to accounts within SAVE that are maintained in the name of the school districts within the county. If the director cannot determine from which county receipts were collected, then the receipts must be allocated among the possible counties based on the department's allocation rules set forth below.

109.4(1) *Pro-rata share based on enrollment.* By June 1 preceding each fiscal year the director must compute the guaranteed school infrastructure amount for each school district, each school district's sales tax capacity per student, and the supplemental school infrastructure amount for the coming fiscal year. Each school district that has approved imposition of the tax under this chapter shall receive a guaranteed distribution amount of the tax revenues. Revenues from this tax will be allocated to each school district's respective account by the department. If a county has more than one school district or a portion of a school district, tax revenues must be remitted to each school district or portion of a school district in which the tax is imposed on a pro-rata basis. The allocation on the pro-rata basis will be based upon the ratio of the actual enrollment for the school district that attends school in the county to the total combined actual enrollments for all of the school districts that attend school in the county. The formula to compute this ratio is the following:

$$\frac{\text{Actual enrollment for the school district}}{\text{Total combined actual enrollments of all school districts in county}}$$

Combined actual enrollment for a county is based on actual enrollment figures reported by October 1 by the department of education to the department of management. The actual enrollment figures are forwarded by March 1 annually to the department of revenue so the department can compute estimate payments for the following fiscal year.

School districts that voted on and approved a school infrastructure local option sales and services tax prior to April 1, 2003, but seek to not have distribution under this new computation formula shall not be included in the computations of estimates for the county or counties in which the school district is located.

If a school district is located in more than one county, the amount to be distributed to that school district will be computed separately for each county based on the school district's actual enrollment in each county.

109.4(2) *Jurisdictions with tax approved prior to April 1, 2003.* Jurisdictions that approved implementation of this tax prior to April 1, 2003, shall receive revenues based on the following formulas:

a. Prior to April 1, 2003, approval and above per student capacity. A school district that approved the school infrastructure local option sales and services tax prior to April 1, 2003, and has a sales tax capacity per student above the guaranteed school infrastructure amount set forth in 109.1(422E) will receive an amount equal to its pro-rata share as computed in 109.4(1). A school district may elect to change the amount it receives and receive its distribution based on 109.4(1) for all subsequent years for the duration of the term of the tax for that jurisdiction. To receive this distribution, a school district must have passed a resolution by October 1, 2003, to agree to receive distribution of the revenues from the tax based on the full amount to be received under 701—Chapter 108.

b. Prior to April 1, 2003, approval and below per student capacity. A school district that approved the school infrastructure local option sales and services tax prior to April 1, 2003, and has a sales tax capacity per student below the guaranteed school infrastructure amount will receive an amount equal to its pro-rata share as computed in 109.4(1) and receive a supplemental amount as defined in 109.1(422E) for the remainder of the term of the tax in that jurisdiction. A school district may opt out of receiving this supplemental amount and choose to receive its distribution based on 109.4(1) for all subsequent years for the duration of the term of the tax for that jurisdiction. To opt out, a school district must have passed a resolution by October 1, 2003, to agree to receive distribution of the revenues from the tax based on the full amount to be received under 701—Chapter 108.

109.4(3) *Jurisdictions with tax voted on and approved on or after April 1, 2003.* Jurisdictions that have approved implementation of this tax on or after April 1, 2003, will receive revenues based on the following formulas:

a. A school district that has voted on and approved this tax on or after April 1, 2003, will receive an amount equal to its pro-rata share as computed in 109.4(1), not to exceed its guaranteed amount revenues. If a school district's pro-rata share does not meet the guaranteed amount of revenues then the district must receive a supplemental amount.

b. A school district that approves the continuation of the tax on or after April 1, 2003, will receive an amount equal to its pro-rata share as computed in 109.4(1), not to exceed its guaranteed amount. However, if the school district's pro-rata share is less than its guaranteed amount, the school district will receive a supplemental amount.

It must be noted that payment to a school district shall not exceed the guaranteed school district amount. A school district that qualifies for a supplemental payment shall not receive more than the guaranteed amount in any subsequent year.

701—109.5(422E) *Insufficient funds.* There may arise a deficiency in the SAVE fund to pay the supplemental payments in full. In this situation, the amount available in the SAVE fund must first be used to increase the amount to the school district with the lowest sales tax capacity per student to an amount equal to the amount for the school district or school districts with the next lowest sales tax capacity per student, and then increase the amount to school districts to an amount equal to the amount for the school district or school districts with the next lowest sales tax capacity per student and continue on in this manner until money is no longer available or all school districts reach their guaranteed school infrastructure amount.

701—109.6(422E) *Use of revenues by the school district.* Nothing in these rules prevents a school district from using its sales tax capacity per student or its guaranteed amount to pay principal and interest on obligations issued pursuant to Iowa Code Supplement section 422E.4.

109.6(1) *Districts with below guaranteed amount.* School districts with a sales tax capacity per student below its guaranteed amount must use the amount equal to its supplemental amount to pay principal and interest on outstanding bonds previously issued for school infrastructure needs as set forth in Iowa Code Supplement section 422E.1(3). Any money remaining after the payment of these obligations may be used for authorized infrastructure purposes of the school district. After July 1, 2003, an election may be held for voters in the school district to approve a revenue purpose statement which includes items for which the additional revenues may be expended after payment of the district's bond obligations.

109.6(2) *Spending limitation on small enrollment—certificate of need.* A school district shall not expend the supplemental amount received for new construction or for payments for bonds issued for new construction. In order to expend supplemental money for new construction or bonds for new construction, the school district must, prior to expenditure, apply to the department of education for a certificate of need.

To determine whether a certificate of need should be issued or denied, see Iowa Code Supplement section 422E.3A(6) or the rules of the department of education for factors that will be considered.

A certificate of need for the above-defined school districts is not required in order to pay the following:

a. Outstanding bonds issued for new construction pursuant to Iowa Code section 296.1, prior to April 1, 2003.

b. To repair schoolhouses or buildings, equipment, technology, or transportation equipment for transporting students as set forth in Iowa Code Supplement section 298.3; or

c. Construction necessary to comply with the Americans with Disabilities Act pursuant to 42 U.S.C. Sections 12101-12117.

701—109.7(422E) Bonds. Negotiable, interest-bearing school bonds may be issued by the school district's board of directors without an election. Revenues from tax imposed under this chapter must be used to repay principal and interest of these bonds. Proceeds from these bonds must be used only for school infrastructure needs as defined in this chapter. These bonds may only be issued by a school district that has imposed tax under this chapter. The maximum period for principal on bonds to be payable cannot exceed the date of repeal stated in the ballot proposition.

701—109.8(422E) 28E agreements. A school district which has imposed the tax under this chapter has the authority to enter into an agreement authorized and defined in Iowa Code chapter 28E with one or more cities whose boundaries encompass all or a part of the area of the school district. Such an agreement will set forth a designated amount of revenues that a city or each city may receive from the tax imposed under this chapter. A city or cities entering into an Iowa Code chapter 28E agreement are authorized to expend their designated portion of taxes imposed under this chapter for any valid purpose permitted and defined under this chapter as a school infrastructure purpose or for any purpose authorized by the governing body of the city.

A school district where school infrastructure local option sales and services tax is imposed is also authorized to enter into an Iowa Code chapter 28E agreement with another school district which is located partially or entirely in or is contiguous to the county where the tax is imposed. The school district shall expend its designated portion of the school infrastructure local option sales and services tax revenues only for infrastructure purposes.

A county entering into an Iowa Code chapter 28E agreement with a school district in which tax under this chapter has been imposed is authorized to expend its designated portion of such tax revenues to provide property tax relief within the boundaries of the school district located in the county.

Effective July 1, 2003, a school district that has imposed tax under this chapter may enter into an Iowa Code chapter 28E agreement with a community college or area education agency that is located partially or entirely in or is contiguous to the county where the tax is imposed. The community college must expend its designated portion of the tax under this chapter only for infrastructure purposes. The area education agency must expend its designated portion of the tax under this chapter only for infrastructure and maintenance purposes.

These rules are intended to implement Iowa Code Supplement sections 422E.1 to 422E.3, 422E.3A, 422E.4 and 422E.6.

[Filed 3/26/04, Notice 2/18/04—published 4/14/04, effective 5/19/04]

CHAPTERS 110 to 119

Reserved